

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

ORDER AMENDING RULE 16
OF THE COURT OF COMMON PLEAS
RULES OF CIVIL PROCEDURE

This 18th day of Jan, 2010, it is ORDERED THAT:

- I. Court of Common Pleas Civil Rule 16 is deleted in its entirety, and replaced with the following:

Rule 16. Pretrial procedure; formulating issues.

(a) *Alternative Dispute Resolution.* Upon the filing of the last responsive pleading, and prior to the commencement of any further process in the case other than a motion to dismiss for lack of jurisdiction, all matters not exempt from this Rule 16(a) shall be submitted to compulsory Alternative Dispute Resolution, in accordance with the following:

(1) Within thirty (30) days of the filing of the last responsive pleading, the parties shall confer and select a method of ADR and an ADR Practitioner. Such ADR may include, but shall not be limited to, mediation, neutral case assessment, nonbinding arbitration or, if agreed to by the parties, binding arbitration. If the parties cannot agree on the format of ADR, the default format shall be mediation unless otherwise ordered by the Court.

(2) Within forty-five (45) days of the filing of the last responsive pleading, the parties shall file a Joint ADR Statement and Certification specifying the method of ADR, the name of the ADR practitioner and the expected date of completion of the ADR. If the parties are unable to agree upon an ADR method or Practitioner, the parties shall so inform the Court in the Joint ADR Statement and Certification. If a party believes completion of Rule 3 (h) discovery, identification of additional defendants, request for physical examination of a claimant, or other circumstance must be addressed prior to ADR, it shall so inform the Court in the Joint ADR Statement and Certification. The Court may impose sanctions upon a party or both parties if it determines that the parties have not attempted to agree upon an ADR method or Practitioner in good faith. *Failure to file a Joint ADR Statement and Certification may result in dismissal of the matter under Rule 41(e).*

(3) In the event the parties cannot agree on an ADR method, the Court shall order mediation and appoint a mediator. In the event the parties agree on an ADR method but not on an ADR Practitioner, the Court shall appoint an eligible ADR Practitioner.

(4) The parties shall select an eligible ADR Practitioner who may serve under this Rule. If the parties elect arbitration, the ADR Practitioner shall have been a practicing member of the Delaware Bar for at least five (5) years and be in good standing. If the parties elect mediation, the ADR Practitioner must have completed certified mediation training. Neutral assessment may be performed by an experienced ADR Practitioner with expertise in the subject matter acceptable to all parties.

(5) The parties shall pay the ADR Practitioner in accordance with the allocation and amount of fees established by the ADR Practitioner and agreed to by the parties or ordered by the Court. The ADR Practitioner may apply to the Court for sanctions against any party who fails to comply with the terms of engagement established by the ADR Practitioner and agreed to by the parties including, but not limited to, dismissal of the action or default judgment.

(6) The parties shall file a copy of the ADR Practitioner's decision or other resolution or report with the Court with fifteen (15) calendar days of the issuance thereof. If mediation was unsuccessful, the matter shall proceed in accordance with these Rules of Court. Unless binding arbitration was selected, either party may file written objection to the arbitration or neutral assessment decision with the Civil Clerk within 15 calendar days of the decision and the matter shall then proceed in accordance with these Rules of Court. If no written objection to the ADR resolution or decision is filed within twenty (20) calendar days, any party may move the Court to enter the decision or resolution as a judgment of the Court.

(7) **Exemptions.** The compulsory ADR provisions set forth in this Rule shall not apply to the following cases: (i) those in which any party is not represented by counsel; (ii) appeals *de novo* from Justice of the Peace Court filed pursuant to 10 *Del. C.* §9570 *et seq.*; (iii) confirmation of arbitration awards, (iv) actions solely for consumer debt; (v) statutory penalty cases; (vi) *in forma pauperis* cases, or (vii) any other civil case which the Court in its discretion deems exempt.

(8) The ADR Practitioner may not be called as a witness in any aspect of the litigation or in any proceeding relating to the litigation in which the ADR Practitioner served. In addition, all ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality agreement signed by the parties and the ADR Practitioner as part of the ADR.

(9) The following definitions apply to this rule:

(a) "Arbitration" is a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the facts and the law. If the parties stipulate in writing the decision shall be binding, in which instance the case is removed from the Court's docket.

(b) "Mediation" is a process by which a mediator facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties until a resolution is agreed to, the parties discharge the mediator, or the mediator determines that the parties cannot agree.

(c) "Neutral case assessment" is a process by which an experienced neutral assessor gives a non-binding, reasoned oral or written evaluation of a controversy, on its

merits, to the parties. The neutral assessor may use mediation and/or arbitration techniques to aid the parties in reaching a settlement.

(d) "ADR Practitioner" shall include the arbitrator, mediator, neutral case assessor or any other Practitioner engaged by the parties to facilitate ADR.

(b) ***Scheduling and planning.*** Except in categories of actions identified in this rule or any specific action exempted by the Court:

(1) The Court may under the provisions of this Rule enter a Pre-Trial Scheduling Order, that either establishes or limits the following time schedules:

(i) To join other parties or to amend the pleadings.

(ii) To file and hear motions.

(iii) To complete discovery.

(iv) To establish ADR resolution methods, appoint an ADR Practitioner or otherwise facilitate ADR resolution when the parties have been unable to do so in accordance with Rule 16 (a).

(v) To set the date, or dates for conferences before trial, a final pretrial conference, and trial;

(vi) Any other matters the Court deems appropriate in the circumstances of each case.

(2) Any other deadlines or protocols appropriate in the circumstances of the case may be imposed by the Court. In addition, appropriate sanctions for failure to meet the deadlines and requirements established by the Scheduling Order or Pretrial Worksheet/Case Management Worksheet detailed below may be imposed including, at the Court's discretion, dismissal of the action or entry of default judgment.

(3) **Mandatory Case Management Worksheet/Order or Pre-Trial Worksheet.** Within twenty (20) calendar days of the filing of either a report that ADR was unsuccessful or a party objection to the ADR Practitioner's decision or resolution, the parties shall file a Case Management Worksheet/Order, or Pre-Trial Worksheet with the Civil Clerk who shall present the same to the Court for consideration. This Order shall encompass the deadlines set forth in (b)(1) Scheduling and Planning of this Rule. Failure to comply with this deadline may result in the imposition of sanctions, including but not limited to dismissal of the case under Rule 41 (e) or other appropriate sanction.

(c) ***Pre-Trial Conferences.*** In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a Commissioner for findings to be used as evidence at trial;

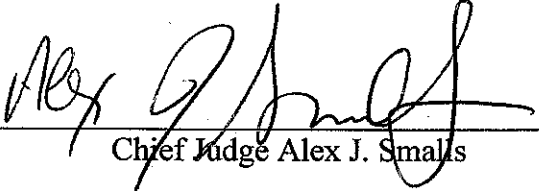
(6) The selection of an ADR resolution method, appointment of an ADR Practitioner, or to otherwise facilitate ADR resolution when the parties have been unable to do so in accordance with Rule 16 (a);

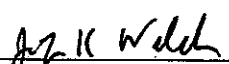
(7) Such other matters as may aid in the disposition of the action.

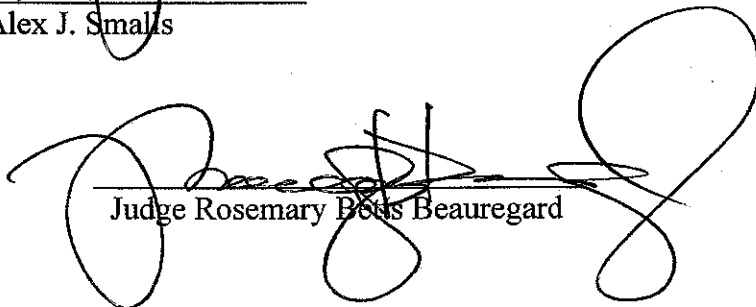
(d) **Final pretrial conference.** A final pretrial conference may be held as close to the time of trial as reasonable under the circumstances. The participants at this conference shall formulate a plan for trial, including the presentation of a pretrial stipulation which substantially complies with the pretrial stipulation form approved by the Court. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

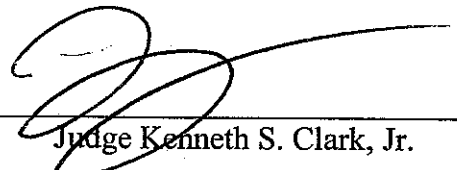
The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.


II. The effective date of this rule amendment shall be April 30, 2010

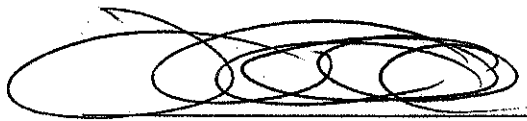

Chief Judge Alex J. Smalls


Judge John K. Welch

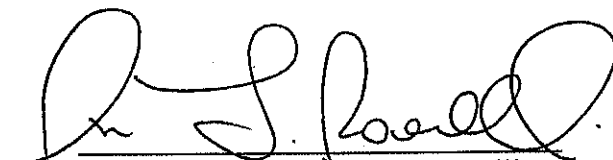

Judge Rosemary Bess Beauregard


Judge Kenneth S. Clark, Jr.


Judge Charles W. Welch, III

A stylized, cursive handwritten signature consisting of several overlapping loops.

Judge Joseph F. Flickinger, III

A cursive handwritten signature that appears to read "A. L. Rocanelli".

Judge Andrea L. Rocanelli

A cursive handwritten signature that reads "Anne Hartnett Reigle".

Judge Anne Hartnett Reigle